

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2013

Public Authority: HM Treasury
Address: 1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant has requested information relating to meetings and correspondence which took place between the Chancellor and the former Chancellor Lord Lawson, between 12 May 2010 and 20 March 2012. A transcript of a discussion between these individuals during this time frame is held by HM Treasury however the entire transcript is not covered by the Freedom of Information Act 2000 (FOIA) as parts of the transcript relate solely to party political discussions. HM Treasury explained that some parts of the transcript related to discussion about the formulation and development of areas of HM Treasury policy. However it said that whilst this information was covered by FOIA, it considered that it was exempt under section 35(1)(a) FOIA. It also said that section 40(2) and section 43(2) FOIA were also applicable to some parts of that information.
2. The Commissioner's decision is that HM Treasury has correctly applied section 35(1)(a) in this case to withhold the parts of the requested information which have been considered under FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 20 March 2012, the complainant wrote to HM Treasury and requested information in the following terms:

"I would like the:

a) time

- b) date
- c) location
- d) names and titles of attendees
- e) number of attendees
- f) agenda
- g) minutes
- h) menu
- i) a list of documents generated as a direct result of the event

relating to meetings between the Chancellor, George Osborne, and the former chancellor Lord (Nigel) Lawson taking place between 12 May 2010 and today. I would also like information relating to any correspondence between Mr Osborne and Lord Lawson for the same time period. This would include, but not be limited to, i) emails (and email attachments) ii) letters iii) memos of messages iv) memos of telephone conversations.

5. The HM Treasury responded on 19 April and 16 May 2012. It stated that the information requested was not held.
6. Following an internal review HM Treasury wrote to the complainant on 5 September 2012. It stated that it had identified one piece of information relevant to the scope of the request but only parts of this fell within the scope of the request, this was a transcript of a telephone conversation between the Chancellor and Lord Lawson. It said that parts of the transcript related solely to party political discussions and would not therefore be covered by FOIA. It said that this information was exempt from disclosure under section 35(1)(a), section 40(2) and section 43(2) FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 20 September 2012 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether HM Treasury has correctly determined the information which would fall within the scope of the request. He will also consider whether or not it was correct to withhold the information, which it did consider to fall within the scope of the request, under section 35(1)(a), section 40(2) and section 43(2) FOIA.

Reasons for decision

9. Upon viewing the transcript in full, the Commissioner considers that parts of the transcript would fall outside the scope of FOIA as they relate solely to party political discussions. In reaching this decision the Commissioner has taken into account his comments in FS50422276. In that case he stated that the FOIA makes no distinction between political information and non-political information. However, the Commissioner considers the nature of the disputed information to be a highly relevant factor when deciding whether the information is held for the purposes of the FOIA. Political information is still held by a public authority if it amounts to the business of the public authority.
10. Therefore, the Commissioner has considered whether the parts identified by the Treasury as outside scope amount predominantly to party political activity or government activity. A distinction therefore has to be made on the basis of whether the transcript was primarily focussed on the politics of the situation or on details of the potential policies themselves. Having viewed the information he is satisfied that the Treasury has correctly separated that information which is "party political" and therefore outside the scope of FOIA although it is not possible to explain his reasoning within this Notice due to the risk of revealing the nature of the information itself. He has also noted that where the Treasury has accepted that some of the information could be said to be less clear cut in nature it has concluded it is within the scope of FOIA.
11. The Commissioner has therefore only considered the Treasury's application of section 35(1)(a) to the parts of the transcript which fall within the scope of FOIA.
12. Section 35(1)(a) of FOIA states that, "Information held by a government department or by the National Assembly for Wales is exempt information if it relates to- (a) the formulation or development of government policy".
13. The Commissioner has first considered whether the information in question relates to the formulation or development of government policy.
14. The Commissioner takes the view that the formulation of government policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a minister. Development may go beyond this stage to the processes involved in improving or

altering already existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.

15. The Treasury has explained that the policies referred to in the transcript were at the formulation stage, in that potential policy options were being discussed. The Treasury has provided an example of a government policy to which the transcript relates, however the Commissioner is unable to detail this within this Notice as this would reveal the content of the withheld information. The Commissioner has therefore provided further explanation in the confidential annex attached to this Notice.
16. Upon viewing the withheld information the Commissioner is satisfied that it does relate to the formulation of government policy.

Public Interest Test

17. Section 35(1)(a) is a qualified exemption and accordingly subject to the public interest test. The Commissioner has therefore gone on to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In *DfES v The Information Commissioner and the Evening Standard (EA/2006/0006)* the Tribunal set out 11 principles that should be used as a guide when weighing up the balance of the public interest in connection with section 35(1)(a). The Commissioner has considered the principles that are relevant to this case.

Public interest arguments in favour of disclosing the requested information

18. The Treasury has explained that it recognises that the following public interest arguments favour disclosure of the requested information:
 - There is a public interest in disclosing information which will inform public debate.
 - There is a public interest in the process of government policy making being transparent.
 - There is a particular public interest in knowing about the different individuals and interest groups who have access to the Chancellor.

Public interest arguments in favour of maintaining the exemption

19. The Treasury has explained that it believes the following public interest arguments favour maintaining the exemption:

Safe Space

- The Treasury explained that the policies discussed in the transcript have not been announced or implemented, and therefore 'safe space' is required so that potential policy strategies can be discussed openly and freely without the fear of premature disclosure.

Chilling Effect

- Disclosure would inhibit the frankness and candour of policy discussions. This would limit the range of views the Chancellor can take into account and would affect the quality and range of policies open to consideration.
- It is important that Ministers can access a range of views to support their understanding of particular issues. To ensure the policies are well informed Ministers must be able to discuss with knowledgeable and expert individuals. It would not be in the public interest to inhibit Ministers' ability to take views and discuss issues relating to ongoing or future policy options.

Timing

- The Treasury has explained that the potential policy options discussed in the transcript have not been announced or implemented. It said that if they had this may have altered the balance of the public interest. However at the time of the request they had not.

Balance of the public interest arguments

20. The Commissioner considers that disclosure of the requested information would enable the public to glean a better understanding of the issues in this policy area and would thereby further public discussion and debate. This adds weight to the public interest in favour of disclosure.
21. The Commissioner considers that due to the nature of the withheld information in this case, and the subject matter of the potential policy options, this also adds weight to the public interest in favour of disclosure.
22. The Commissioner does however consider that the relevant government policy in this case is still under development and has not been announced or implemented. There is therefore a strong public interest in protecting the safe space for Ministers and officials to be able to develop

policy of a live issue away from external scrutiny. The Commissioner also considers that there is a strong public interest in Ministers and officials being able to discuss issues openly and candidly. If the requested information were disclosed whilst government policy is still under development Ministers and officials may be less open in their further discussions. The Commissioner considers that the timing of the request adds significant weight to the public interest in favour of maintaining the exemption.

23. The Commissioner considers that whilst there is a public interest in informing public debate surrounding the issues to which the potential policy options relate, he considers that in this case there is a very strong public interest in allowing Ministers and officials the safe space to further develop the policy in question and to be able to continue to effectively discuss issues in a frank and open manner. The Commissioner therefore considers that the public interest in disclosure is outweighed by the public interest in favour of maintaining the exemption in this case.
24. As the Commissioner considers that section 35(1)(a) FOIA was correctly engaged in this case, he has not gone on to consider the application of any of the other exemptions applied any further.

Right of appeal

25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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